

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,209

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare placing her on certified vendor payment (CVP) status for the rent portion of her ANFC grant. The issue is whether the petitioner has demonstrated "financial mismanagement" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with her two children, ages eight and four, in a rental apartment. In June, 1992, the petitioner was placed on CVP status because she was behind on her rent. However, the petitioner's ANFC grant was closed in August, 1992, when the petitioner went to work.

The petitioner reapplied for ANFC in June, 1993. She was still living in the same apartment she had been in the previous year. The rent for that apartment is \$240.00 a month. In July, 1993, the petitioner's landlady, who lives in Massachusetts, called the Department and reported that the petitioner was twelve months in arrears on her rent--a total of \$3,480.00.

Based on this information, the Department determined that the petitioner had a "money mismanagement problem" and placed her ANFC grant on CVP status. Under this status the Department proposed to pay the petitioner's rent of \$240.00 a month, plus another \$25.00 a month on the petitioner's arrearage, directly to the petitioner's landlady. The remainder of the grant would be paid directly to the petitioner.

(1)

The petitioner testified that she has lived in this apartment for the last seven years. She maintains that she has intentionally withheld her rent payments because of serious defects in the premises that the landlady refuses to remedy. These include a rickety porch, defective electrical outlets, and a loose toilet. The petitioner maintains she has not called the building inspector because she fears the entire building will be condemned. She also maintains that the landlady has not brought proceedings to evict her, and will not do so in the future, because the landlady also fears the building's condemnation.

Based on the petitioner's uncontroverted testimony, the situation between her and her landlady appears, at worst, to be a standoff that, while not mutually agreeable, at least allows both parties some continued benefit. The petitioner has a free, albeit substandard, place to live; while the landlady avoids making any repairs to the building and continues to collect rent from the other tenants. While one need not approve of this situation, it appears that far from "mismanaging" her money, the petitioner simply has her landlady "over a barrel", and faces little risk of eviction anytime soon.

The fact that the landlady has taken no action against the petitioner (other than to complain to the Department) even though she has not received rent from the petitioner for a year and a half, is mute testimony to the effectiveness, if not the legitimacy, of the petitioner's action. The petitioner has lived in the apartment for seven years, and there is no evidence whatsoever that her withholding of rent is jeopardizing her or her children's welfare. The worst that is likely to happen is that the petitioner will eventually be forced to move--the result of either being evicted or the building being condemned. However, there is absolutely no evidence that simply having to move--if and whenever that actually happens--will pose any hardship or threat to the health and safety of either the petitioner or her children.

### ORDER

The Department's decision is reversed.

### REASONS

The Department's regulations regarding "protective payments" include the following provisions:

#### 2235 Protective Payments

Protective payments are management of assistance by a third party outside of the assistance group to meet the needs of a dependent child and the relatives with whom the child is living when payment of assistance to the relative would be contrary to the welfare of the child, or when such payments are required as a sanction as indicated below.

Protective payments are used as a temporary measure in situations where severe difficulty in money management jeopardizes the welfare of the children and when the relative has the capacity to learn to manage his funds in a way to assure proper care of children. This capacity can be presumed unless there is evidence to the contrary.

Such assistance is given in the form of a check made payable to a protective payee who is interested in or concerned with the welfare of the family. Until an acceptable protective payee can be found, a substitute form of protective payment known as CVP is used.

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#### 2235.1 Criteria for Need of Protective Payment Due To Money Mismanagement

Evaluation will be made by the District Director of complaints of financial mismanagement and of recipient's capacity to overcome problems in order to establish whether or not a protective payment plan is warranted. The services of Social and Rehabilitation Services may be requested in this evaluation

particularly since it involves the welfare of children.

Financial mismanagement exists where the health and safety of the children are jeopardized by the inability of the caretaker relative to meet his basic financial obligations on a regular basis. Such obligations include, but are not limited to, the following.

- a. rent, tax or mortgage payments;
- b. utility or service payments, such as those which provide heat, water and electricity;
- c. the provision of adequate clothing.

It need not be shown by the Department that actual harm to the children has been suffered before protective payments may be authorized. A failure to keep sufficiently current on payment of bills such that the loss of the services provided is threatened will suffice. However, it shall be a defense available to the caretaker relative that an emergency or an extraordinary event of high priority has occurred, which event was the cause of said failure to make regular payment. The Department shall also give due consideration to a claim by the caretaker relative that regular payment was not made because of a reasonable exercise of consumer rights arising from a legitimate dispute with the providers of the involved services, or because the expenses for necessary bills exceed the caretaker recipient's grant and other income.

In this case, there is no question that the petitioner is seriously behind in her rent. However, even though one may view the petitioner's prolonged withholding of rent as imprudent, irresponsible, or, perhaps, even roguish, there is simply no evidence that it is "financial mismanagement" within the meaning of the above regulations. <sup>(2)</sup>

The board has clearly and unequivocally held that in order to involuntarily place a recipient of ANFC on CVP status the Department must have evidence that the recipient's nonpayment of rent or other bills poses some "direct and foreseeable threat to the health and safety of the petitioner's children". Fair Hearing Nos. 7883 and 6649. The mere likelihood that the recipient may be evicted is, in and of itself (i.e., in the absence, for example, of evidence that the children are being harmed by frequent or repeated uprooting from their home or that the family, if evicted, risks being homeless), insufficient to establish that the "health or safety of the children are jeopardized". *Id.*

The board has also specifically admonished the Department against imposing CVP status on recipients based solely on a "paternalistic" assessment by the Department of the wisdom or probity of a recipient's financial decisions. *Id.* CVP status cannot be used as a device to set the Department up as a "collection agent" for landlords when ANFC recipients fail to pay their rent--however inexcusable that failure may be. Such action is not only an abuse of the regulations, *supra*, but also contrary to the statutory goals and purposes of the ANFC program. See 33 V.S.A. § 101. See Fair Hearing No. 6491.

In this case, whether or not the petitioner's actions are responsible or legitimate, there is no evidence whatsoever that the welfare of the petitioner's children is at risk due to her nonpayment of rent. Therefore, the Department's decision placing her on CVP status is reversed.

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1. Because the petitioner requested a fair hearing shortly after receiving notice of the Department's determination, the action has not yet been implemented. The fair hearing was held on November 19, 1993, after being rescheduled at least twice at the petitioner's request.
2. If it is believed that the condition of the apartment threatens the health and safety of the petitioner's children the appropriate action would be to refer the case to SRS.